STAPPA

State and Territorial Air Pollution Program Administrators

ALAPCO

Association of Local Air Pollution Control Officials

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Fax Transmittal

To: James L. Connaughton
Cc: CEQ Task Force

From: Geri O'Sullivan
Phone:
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Date: 10/31/01
Pages (including this cover page): 24

Comments:

Attached please find a copy of the associations' comments on the August 20, 2001 *Federal Register* notice published by the Council on Environmental Quality (CEQ) soliciting comments on the nature and scope of the federal interagency task force (task force) established pursuant to Executive Order 13212 to explore ways to expedite energy projects (66 *Federal Register* 43586).

STAPPA / ALAPCO

STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS

ASSOCIATION OF LOCAL AIR POLLUTION CONTROL OFFICIALS

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

October 31, 2001

James L. Connaughton, Chairman
Council on Environmental Quality
Executive Office of the President
17th and G Streets, NW
Washington, DC 20503

Dear Mr. Connaughton:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), thank you for the opportunity to provide comments on the August 20, 2001 *Federal Register* notice published by the Council on Environmental Quality (CEQ) soliciting comments on the nature and scope of the federal interagency task force (task force) established pursuant to Executive Order 13212 to explore ways to expedite energy projects (66 *Federal Register* 43586). Specifically, the task force will work with and monitor the efforts of federal agencies to expedite these agencies' review of permits, or take other actions necessary to accelerate the completion of energy-related projects, while maintaining safety, public health and environmental protections.

STAPPA and ALAPCO commend both the CEQ and the Administration for recognizing the importance of environmentally sound production and transmission of energy and for exploring ways to expedite the permitting process. As the primary implementers of permit programs under the Clean Air Act (Act) throughout the nation, we are extremely cognizant of the need for efficient clean energy production. Toward that end, we have continually given high priority to those permits that incorporate the cleanest, most efficient energy-producing technology. As a result, in the last few years, state and local agencies have permitted tens of thousands of megawatts (MW) of new electrical generation, with additional tens of thousands of MW currently being processed (attached is a copy of our associations' July 27, 2001 comment letter, submitted as part of EPA's recent 90-day NSR review process, outlining these projects in detail). However, we also recognize that there are aspects of the air permitting process that can be improved upon, and offer the following comments and recommendations in that regard.

First and foremost, STAPPA and ALAPCO believe that the air permitting process is working and is not preventing energy expansion or efficiency improvement. However, we also recognize that some aspects of the permitting process, such as New Source Review (NSR), while not preventing energy expansion or efficiency, can be improved. Specifically, while we believe that NSR works well for new sources, improvements can be made concerning the application of NSR to modifications of existing sources. Toward

that end, for the last eight years, we have participated in NSR reform efforts, using our long-standing NSR principles to evaluate draft proposals put forth by EPA, industry and environmental groups. We have endorsed many of the concepts EPA proposed for clean unit exemptions, sector-based off ramps and plant-wide applicability limits as part of the agency's NSR reform efforts. Most recently, we have participated in EPA's 90-day NSR review effort, and we again refer you to the attached July 27, 2001 comments, which, along with attachments and our July 2001 testimony at EPA's NSR public stakeholder meetings, comprise the position the associations' have held on NSR reform. We strongly encourage the task force to coordinate its permit streamlining effort with EPA's well-established NSR reform efforts and to incorporate EPA's 90-day review docket by reference into any task force docket.

We also believe that any effort to streamline the permitting process should include an upgrade of EPA's Best Available Control Technology (BACT)/Lowest Achievable Emissions Rate (LAER) Clearinghouse. As the primary implementers of the NSR permit program, state and local air agencies are responsible for making the BACT/LAER determinations for new or modified sources. These determinations provide us with one of the most critical tools we need to protect the nation's air quality in the future – the ability to ensure that a source installs good controls during its initial construction or when it undertakes a major modification. For this reason, we supported the Senate Appropriations Committee's increase of EPA's BACT/LAER Clearinghouse funding level to $2.1 million in FY 2001 to upgrade the Clearinghouse and have attached for your review a copy of our May 5, 2000 letter to Senator Bob Smith, then Chairman of the Senate Environment and Public Works Committee, in support of that increased funding. We strongly believe that the increased funding level will allow EPA to develop and manage a more robust BACT/LAER Clearinghouse that will greatly expedite information transfer, promote technical analyses and ensure equity in permit transactions. By providing state and local agencies, as well as the regulated community, with the most recent BACT/LAER determinations, an EPA-managed Clearinghouse will play a critical role in ensuring that new or modified significant sources install BACT/LAER at the time of their construction. Moreover, a robust Clearinghouse would allow state and local agencies to make timely BACT/LAER determinations, thus providing industry with the timeliness and certainty they desire. We have participated in, and are greatly encouraged by, the initial steps EPA has taken as a result of this funding increase to upgrade the Clearinghouse – including stakeholder meetings and workshops – and we are committed to working with the agency in this effort. As the task force moves forward to explore ways to streamline the permitting process, we urge that it support EPA in this important endeavor.

Finally, as the task force identifies ways to streamline the permitting process, we caution that it not weaken or eliminate important aspects of the program. For example, we urge that the task force maintain a process that allows for public comment. A public comment process affords state and local air agencies an invaluable opportunity to interact with the public and make modifications to the permitting process, where appropriate. This process is often our primary contact with the public on air quality issues that affect them, and it is critical to our efforts to protect and improve local air quality. Additionally, we believe that modeling to predict the air quality impacts of new sources

must remain a part of the permitting process. Air quality impact modeling provides regulators with an essential tool for assuring that the health and welfare standards mandated in the Act are protected.

Again, thank you for the opportunity to comment on the scope and nature of the work of the task force. If you have any further questions or desire additional information, please contact either of us or Geri O'Sullivan of STAPPA and ALAPCO.

Sincerely,

John A. Paul
ALAPCO Chair
NSR Subcommittee

William O'Sullivan
STAPPA Chair
NSR Subcommittee

Attachments

STAPPA / ALAPCO

STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS

ASSOCIATION OF LOCAL AIR POLLUTION CONTROL OFFICIALS

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

July 27, 2001

Docket # A-2001-19
Air and Radiation Docket and Information Center
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

To Whom It May Concern:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), thank you for the opportunity to provide comments on the U.S. Environmental Protection Agency's (EPA's) June 22, 2001 New Source Review (NSR) 90-Day Review Background Paper (background paper). The background paper, which was prepared in response to a directive in the President's May 2001 National Energy Policy to examine NSR regulations, represents the agency's first step in the overall review process to determine what, if any, impact the NSR process has on investment in new utility and refinery generation capacity, energy efficiency and environmental protection. Specifically, the purpose of the background paper is to (1) provide background on the NSR program and its implementation; (2) provide an introduction to some of the information EPA is developing for the final report; and (3) request comment upon the information in the document and solicit additional information needed to complete EPA's review.

STAPPA and ALAPCO commend EPA for its speedy and thorough response to the National Energy Policy directive. We have reviewed the background paper and find it to be both accurate and useful. The document serves as an excellent primer for the NSR process, and provides helpful information on the impacts of the NSR process on both the refinery and utility industries. However, in light of the broad context of this review process, we would like to share our general comments on the overall NSR

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process, as well as provide EPA with the additional information it is seeking in the background paper.

General Comments:

STAPPA and ALAPCO have a long-standing interest in NSR. Over the past 25 years, we have worked with EPA, industry and environmental organizations on numerous NSR issues, including offsets in nonattainment areas, netting, the Best Available Control Technology (BACT)/Lowest Achievable Emissions Rate (LAER) Clearinghouse, top-down BACT and NSR reform.

As the primary implementers of NSR programs throughout the nation, we believe that the NSR requirements under the Clean Air Act are an essential tool, critical to state and local air pollution control agencies' ability to attain and maintain the health and welfare standards mandated in the Act. Quite simply, NSR provides state and local permitting agencies an opportunity to review proposed new and modified stationary sources to ensure that they install the best available control technology available to minimize their impacts on ambient air quality. For example, NSR has resulted in millions of tons of reductions of nitrogen oxides (NO_x) and sulfur dioxides (SO_2) that would not have otherwise occurred. Therefore, any changes to the current NSR process must serve to better protect public health and welfare, as well as strengthen our ability to do so.

In addition, the information we have received from state and local permitting agencies throughout the nation indicates that the current NSR process does not prevent sources from expanding capacity or improving efficiency. In fact, our experiences have demonstrated that where the NSR process functions as it was originally designed – where sources notify permitting agencies of the proposed construction of new sources, or of modifications to existing sources, in a timely manner and supply us with a well-prepared, complete permit application that commits to the installation of the best control technology – the NSR process can readily fit within the overall planning process of a project.

We base our comments on the hundreds of years of combined experience that we share as state and local permitting authorities. Furthermore, we are guided by a set of principles that the associations adopted in 1994 to assist us in our efforts to work with EPA in the agency's NSR reform process. The cornerstone of these principles is the concept that the best and most cost-effective time to control a source is at the time of its installation or modification, and that BACT and LAER should be applied in attainment and nonattainment areas, respectively. Consistent with this principle, the associations believe that a source's selection of BACT should be "top down" to ensure that sources apply the best controls, unless they can demonstrate that another control technology is more appropriate.

Our associations also hold the principle that NSR sources should not be allowed to "net out" of control requirements (BACT or LAER). This practice undermines the

benefits that can be achieved by applying controls to new or modifying facilities. In fact, the background paper states that the best time to control a source is at the time of installation. Yet, existing EPA policies allow new units at existing sources to net out of NSR requirements. This netting exemption is inconsistent with EPA's stated position that good pollution control technology is necessary at the time of installation; accordingly, STAPPA and ALAPCO strongly recommend that as EPA considers changes to the current NSR process, it take this opportunity to eliminate netting.

We want to be clear that while we do not believe that the NSR process is preventing industry from expanding or increasing their efficiency, we do acknowledge that the NSR process can be improved. For the last eight years, we have participated in NSR reform efforts, using our NSR principles to evaluate draft proposals put forth by the EPA, industry and environmental groups. We have endorsed many of the concepts EPA proposed for clean unit exemptions, sector-based off ramps and plant-wide applicability limits as part of the agency's NSR reform efforts. We continue to support and work with EPA to further develop these concepts. Attached are numerous comments we have submitted to EPA over the last few years, including a March 14, 2000 letter stating our positions on EPA's 1996 NSR reform proposal and the various industry proposals, a May 5, 2000 memorandum detailing our response to EPA's April 26, 2000 NSR proposals, as well as our 1994 principles, that further outline our position on these draft proposals and NSR reform.

However, we also want to be clear that while the current NSR system should be reformed, tens of thousands of megawatts (MW) of new power generator capacity have been permitted under the current process. Even in cases regarding modifications to existing sources, where improvements to the current process would be most useful, permitting agencies have been able to address the vast majority of changes in a timely manner under the current NSR process.

Data Gap Responses

In additional to our general comments on the NSR process, we would like to respond to EPA's request for specific information in the background document. We hope that our responses, which are based on an informal survey of our membership, will provide EPA with the additional information necessary to complete its review.

Information on the Impact of NSR on New Sources

(1) The Amount of Time Spent in Pre-Permit Application Activities

The amount of time a state or local agency spends on pre-permit application activities varies with the complexity of the particular project. Easier projects can be disposed of within a few hours, while some of the most complicated projects can require 30 or more hours of pre-application meetings and discussion. In general, when the industry contacts the agency early in the planning process, pre-application activities can be completed with little or no impact on the overall timing of the project.

(2) Impact Of NSR Requirements on Investment in Expansions of, or New, Utility and Refinery Capacity

The idea that NSR is restricting energy projects is not supported by the experiences of state and local permitting agencies. In the last few years, state and local agencies have permitted tens of thousands of MW of new electrical generation, with additional tens of thousands of MW currently being processed. For example,

- Washington State has approved 3,000 MW of new electrical generation, with another 6,000 MW currently being processed.

- Georgia has permitted 14 new power plants, as well as an expansion of one power plant in the last five years, for a total capacity of 10,000 MW. In addition, Georgia is currently processing applications for nine new power plants with a total capacity of 6,500 MW.

- New Hampshire has two combined-cycle, natural gas-fired power plants under construction for a total of 1,345 MW.

- Since 1997, Wisconsin has issued air pollution control permits authorizing construction or modification of 10 power plants generating 2,600 MW of energy capacity, and is currently reviewing construction permits for an additional 13 power plants that would generate 6,700 MW.

- In California, there are 46 new power projects, including major projects over 50 MW in size, as well as smaller "peaker" projects, that have been approved for construction, totaling 12,000 MW of capacity. In addition, there are approximately 22 projects totaling 6,000 MW that are currently under consideration for approval, and 30 more projects totaling 10,000 MW that have just been announced.

- The Missouri Air Pollution Control Program has evaluated 13 gas turbine projects in the last five years. These projects involved 34 separate turbines producing approximately 3,600 MW of combined electrical output. Missouri currently has two projects pending with 13 turbines and about 1,700 additional MW.

- Connecticut, which has a peak in-state demand of 6,000 MW, has permitted over 2,500 MW in new clean generation since 1997.

- Since January of 1997, Texas has permitted over 36,000 MW of electrical generating capacity, with an additional 10,000 MW of capacity currently undergoing permit review.

- Since 1997, Massachusetts has issued NSR permits for a dozen new or modified electric generating facilities, amounting to approximately 5,000 MW of new capacity.

- In the past year, Arkansas has issued permits for 5,540 MW of capacity, for a total of 6,423 MW since May 1999. Furthermore, the agency has almost 6,000 MW under review, including a 1,800 MW permit that is currently in the public comment phase.

- Since mid-1998, Florida has permitted approximately 15,000 MW of additional clean electrical generating capacity, with an additional 8,000 MW of capacity currently undergoing permit review. Because several of these projects involved repowering while increasing the capacity of grandfathered units, Florida estimates that NO_x emissions will decrease by about 20,000 tons per year, while SO_2 emissions will decrease by over 100,000 tons per year, even with the 23,000 MW increase.

- New Jersey has permitted 2,500 MW of new electric generation in the last two years and is scheduled to propose another 1,500 MW within a month. In addition, New Jersey is actively working on the review of 6,000 MW of applications, with another 2,000 MW of projects in the preapplication stage. This is a total of 12,000 MW that the agency either has approved or expects to approve between 1999 and 2002. This represents more than a 60% increase in the approximately 18,000 MW of existing capacity in New Jersey.

These statistics clearly demonstrate that NSR is not preventing energy expansion or improved efficiency in the United States. Moreover, the timing of the entire NSR process – from pre-application to final permit approval – does not appear to be an impediment to either capacity expansion or efficiency improvement. For example, Georgia's average permitting time ranged from 2 to 12 months, with an average time of five and one-half months. Some of these were PSD "avoidance permits." Just counting PSD permits, the permitting time ranged from 4 to 12 months, with an average time of seven months.

In Wisconsin, projects that have completed the NSR/PSD process have done so in an average of 51 days from the receipt of a complete permit application (174 days from the initial receipt of the application materials). This includes the public comment period. There have been three exceptions to the rule – projects that took an average of 283 days to complete. However, in each of these cases, the process was delayed due to a dispute over pollution control technology – it took an average of 222 days to resolve on BACT/LAER issues. Once these issues were resolved, the average permit time was 61 days.

Even in the situation of longer permit review timeframes for new sources, it is clear that when permit review is managed in a professional manner, with both the applicant and the permitting agency using standard project management procedures, the review process can readily fit within the process for electric generators to plan for and obtain approval to connect to the electrical grid.

(3) The Significance of the Cost of Offsets in Nonattainment Areas Related to the Annualized Cost of Control

The costs of offsets in nonattainment areas is minor in comparison to the costs of the overall project and does not prevent the expansion of energy capacity or efficiency improvements. This is true even in California, where offset availability has become constrained in some areas and prices have increased. However, California's own estimates show that the costs of offsets represent anywhere from less than one percent to not more than six percent of the total project costs of a new power plant.

Information on the Impacts of NSR on Existing Sources

(1) Ability to Undertake Pollution Prevention or Energy Efficiency Projects

Since a true pollution prevention or energy efficiency project should result in decreased emissions, we believe that NSR has not affected the ability of existing sources to undertake these types of programs. Moreover, some state and local agencies, such as New Hampshire, have adopted pollution prevention/NSR policies and guidelines to help sources address this issue.

Conclusion

Based on our review of the background document, as well as data provided by state and local permitting authorities, it is clear that the current NSR process does not prevent sources from expanding capacity or improving efficiency. Moreover, we believe that the NSR requirements under the Clean Air Act are an essential tool, critical to state and local air pollution control agencies' ability to attain and maintain the health and welfare standards mandated in the Act. However, we also believe that the NSR program can, and should, be improved. We think improvements, including eliminating the netting loophole for new sources, could provide greater environmental protection. Toward that end, we look forward to our continued participation in EPA's NSR reform efforts.

Again, thank you for the opportunity to comment on EPA's June 22, 2001 New Source Review (NSR) 90-Day Review Background Paper. If you have any further questions or desire additional information, please contact either of us or Geri O'Sullivan of STAPPA and ALAPCO.

Sincerely,

John A. Paul
ALAPCO Chair
NSR Subcommittee

William O'Sullivan
STAPPA Chair
NSR Subcommittee

Cc: Bill Harnett
Michael Ling

STAPPA / ALAPCO

STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS

ASSOCIATION OF LOCAL AIR POLLUTION CONTROL OFFICIALS

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

March 14, 2000

John Seitz
Director
Office of Air Quality Planning and Standards (MD-10)
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711

Dear John:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), and as a follow-up to the National State and Local Air Quality Roundtable Meeting convened by EPA Assistant Administrator Robert Perciasepe on Sunday, February 6, 2000, we would like to reiterate the associations' top priorities on the agency's 1996 base proposal and the various industry proposals for NSR reform.

Commensurate with EPA's NSR reform stakeholder process begun in 1993, STAPPA and ALAPCO adopted a set of principles to serve as guidance for our associations in any NSR reform effort. Chief among these principles is that the best and most cost-effective time to control a source is at the time of installation or modification. The associations also oppose netting for technology review and urge that this practice be eliminated.

To aid the process of identification and installation of good controls EPA should greatly increase its program support for the Best Available Control Technology (BACT)/Lowest Achievable Emissions Rate (LAER) Clearinghouse. This important step will greatly expedite information transfer, promote technical analyses, and ensure equity in permit transactions. STAPPA and ALAPCO believe EPA's BACT/LAER Clearinghouse should be web-based and function as a worldwide resource for control technology options. Moreover, STAPPA and ALAPCO recognize that the success of the BACT/LAER Clearinghouse depends upon the information it contains; therefore, we support the concept that PSD and major NSR permits not take effect until state and local agencies enter them into the BACT/LAER Clearinghouse. By providing state and local agencies with the most recent BACT/LAER determinations, the

Clearinghouse will play a critical role in ensuring that new or modified significant sources install BACT/LAER at the time of their construction. Moreover, a robust Clearinghouse would allow state and local agencies to make timely BACT/LAER determinations, thus providing industry with the timeliness and certainty they desire. Our associations agree to identify a sub-group of state and local officials to work with EPA on Clearinghouse issues.

With regard to EPA's 1996 NSR reform base proposal, STAPPA and ALAPCO would like to clarify our position on the "clean unit" concept. Originally, the associations opposed this concept based upon EPA's proposed ten-year look back. However, if the clean unit determination were based upon a current top-down determination of BACT, STAPPA and ALAPCO could support the concept. The associations believe the clean unit concept could provide all industries with the opportunity to gain timeliness and certainty on future operations, while at the same time achieving BACT control on an existing source.

With regard to the sector-based off ramp proposal submitted by the Utility Air Regulatory Group (UARG), STAPPA and ALAPCO believe the following changes would bring this proposal in line with the associations' principles, and could serve as a basis for further discussions:

- The off ramp would apply to coal-fired boilers only.

- Existing utility coal-fired boilers that have operated for 30 years or more should be placed on a schedule for upgrade of air pollution control equipment. Upgrade of all units currently over 30 years of age should be accomplished as soon as practical (we feel 2010 is a reasonable end date, with significant progress by 2005).

- Upgrade of air pollution control equipment should be to levels that represent BACT and should apply to all criteria pollutants. The BACT control levels should be established by EPA and should be revised on a periodic basis. Additionally, EPA should establish a process that will allow for the application of harmonized controls for mercury and carbon dioxide.

- Emissions trading could be allowed among coal-fired units to provide the utility industry flexibility in attaining BACT levels over a period of time. However, at the close of the control period (2010 is suggested for the first group of units) each individual unit should be controlled to BACT levels.

- Once controlled to BACT levels, an existing coal-fired unit would be governed by the clean unit concept for future modifications (judged on an allowables-to-allowables test for applicability).

STAPPA and ALAPCO believe that the above recommendations would provide the utility industry with the timeliness and certainty they desire, while at the same time ensuring good controls on all coal-fired units. Units would be brought into the program on an age basis and required to meet known control levels equal to BACT and established by EPA. State and local agencies would work with the industry to assure the BACT levels are attained. Additionally, the future allowables-to-allowables test should resolve the industry's questions regarding "routine maintenance, repair and replacement."

With regard to the Plant-wide Applicability Limit (PAL) proposal, although there are a few outstanding issues, if these issues are addressed in accordance with STAPPA and ALAPCO's principles, it could result in a proposal that would be acceptable to our members. Our recommendations on those issues are as follows:

- The baseline for an actuals-based PAL should be the last two years of operation, with the possibility of substituting a more representative period of time if the industry makes a convincing argument, using PSD contemporaneous guidelines.

- Significant and major new units (federal NSR/PSD definitions) added under a PAL, whether it is actuals-based or allowables-based, should meet federal BACT.

- The allowables-based PAL would be a declining cap that would equate to BACT performance on all units significant and larger at the plant. The company would work with the state or local agency to establish a schedule for attaining the BACT performance level for existing sources within 10 years. Significant progress must be made to meet the BACT performance level in the early years of the PAL implementation.

- A state or local agency may include minor sources in the PAL.

- Partial PALs (e.g., for a boiler house, a production line, or a group of printers) are acceptable.

- The issue of LAER for PAL facilities located in nonattainment areas has not been formally addressed by STAPPA and ALAPCO; however, the associations are not opposed to the use of BACT as the basis for the PAL.

- To the extent that a state rule implementing MACT requires a reduction in the pollutant covered by the PAL, the PAL should be reduced to the extent necessary to meet the MACT. For example, if a source meets a VOC-based MACT through VOC substitution, the PAL would not be reduced.

The complex manufacturing proposal still contains numerous problematic features that must be resolved to make it acceptable to our members, including the following:

- The proposal's concept to eliminate netting is not clearly developed.

- The proposal speaks to future modifications as based on changes to maximum achievable rates, rather than the current actual-to-potential test or the discussed potential-to-potential test. The significance of this proposal is unclear to us.

- The industry-defined levels for the control of new units are based on an after-control potential emissions test. Thus, a new unit could be controlled to 39 tons per year VOC and escape the BACT control requirement defined for a significant source. Additionally, the three levels defined for controls (levels A, B, and C) add confusion to the process.

STAPPA and ALAPCO recommend BACT on new or modified units greater than the significance levels (uncontrolled potential-to-emit).

- Aggregation of units is not discussed. Instead, the proposal commits to further discussions on this issue.

- A new test for "reconstruction" is suggested, but most of the details of this test are unresolved. STAPPA and ALAPCO are concerned with the limited time period suggested for aggregation.

- An air quality impact test is included in the basic program flow chart, but this test is not triggered unless there is an increase in the maximum hourly achievable rate. STAPPA and ALAPCO are interested in preserving the right to require an air quality impact test whenever there is an increase in actual emissions.

- There is a voluntary emission reduction program proposal that would apparently reward a company with a 15-year exemption from NSR if the company agrees to install BACT within a specified timeframe. STAPPA and ALAPCO would prefer the real-time clean unit exemption that EPA is currently discussing.

In addition to those issues, there are various other significant issues that will need to be resolved as this process proceeds. For instance, at the February 28, 2000 Senate field hearing in Cincinnati, Ohio on the NSR program, the definition of "routine maintenance, repair and replacement" was a prime topic of testimony, as was concern with the time it takes for states and localities to review permit applications and issue permits in final form. Additionally, we support the concept of pollution prevention and would like to see its role in NSR more clearly defined. STAPPA and ALAPCO request further discussion with EPA on these and other outstanding issues.

We hope this review of our key NSR reform principles and concerns helps to clarify our most important outstanding issues in this process. EPA staff have been very cooperative in working on the issues to date. We look forward to continuing to work with you and your staff to resolve this important program.

Sincerely,

John A. Paul

John A. Paul
ALAPCO Chair
NSR Subcommittee

Bill O'Sullivan

William O'Sullivan
STAPPA Chair
NSR Subcommittee

Cc: Members of STAPPA and ALAPCO
Pat Rahr, Esq.
Leslie Ritts, Esq.
Henry Nickels, Esq.

STAPPA / ALAPCO

STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS

ASSOCIATION OF LOCAL AIR POLLUTION CONTROL OFFICIALS

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

MEMORANDUM

TO: Bill Harnett and Karen Blanchard

FROM: STAPPA and ALAPCO's NSR Subcommittee

DATE: May 5, 2000

RE: STAPPA/ALAPCO's NSR Subcommittee's Revised Comments on EPA'S APRIL 6, 2000 NSR Proposals

BACKGROUND

On April 6, 2000, EPA provided STAPPA and ALAPCO's New Source Review (NSR) subcommittee with a more detailed NSR sector-based approach and a revised clean unit test proposal. Since that time, the associations have participated in a number of conference call with EPA to discuss the revised proposals, and we would like to take this opportunity to offer the following additional comments and recommendations on the April 6 proposals, as well as reiterate one of the associations' top priorities regarding NSR reform.

NSR SECTOR-BASED APPROACH

With regard to EPA's sector-based approach for NSR reform, we offer the following additional comments and recommendations:

- A mandatory program is preferred over voluntary programs. A mandatory program will ensure all sources in a common category are subject to the same standards and will make emission trading more feasible. A common program for common sources is also more efficient from an implementation perspective.

- The concept of "useful life" should be used as an applicability trigger; it is simple, logical and justifiable from a NSR review perspective. Useful life can be used to provide a phase-in of sources over time as their useful life is reached and automatically continues the sector based program into the future.

- Emission trading works best with mandatory programs. Voluntary programs create issues, such as selective groupings of sources to avoid BACT, which may make trading inappropriate. NSR avoidance

- Pre-defined BACT/LAER would increase timeliness in the processing of permits to install and free up state and local resources for other tasks.

- In order to assure the clean unit lists are accurate and relevant, we emphasize the need for the recommended strengthening of the RACT/BACT/LAER Clearinghouse.

- With regard to the eligibility of existing sources for the clean unit exemption, the associations recommend a two-year look-back period. However, a unit which meets the clean unit performance emissions levels and has had its ambient impact modeled at allowable levels could arguably be eligible for designation.

- Implementation of the clean unit exemption could be accommodated through permits to install (PTIs) or Title V permits.

- The lifetime of the clean unit exemption could be a default ten years, with monitoring and record keeping requirements as part of the implementing permit. Periods less than or beyond the default ten years could be established on a unit category basis.

- When an existing unit applies controls sufficient to meet the clean unit test, we believe the emission reductions below SIP allowables should be eligible for meeting the offset requirements of new units. As long as the excess emission reductions are not used to net a new unit out of review, we believe the emission reductions otherwise meet the offset requirements.

- With regard to the issue of debottlenecking, we believe that Title V permits could eliminate future debottlenecking problems by specifying unit-by-unit emission allowables. As long as emission units at a facility do not exceed their allowables as stated in their Title V permit, debottlenecking should not present a problem.

- Ambient air impact analyses should be performed by any facility anticipating future increases in actual emissions up to allowable levels. If an analysis shows acceptable conditions at allowable emissions, then the clean unit should be free to increase emissions to these levels at any time in the future.

- We believe the above ambient air impact analyses would alleviate any Environmental Justice issues associated with the clean unit test.

BACT/LAER CLEARINGHOUSE

STAPPA and ALAPCO would also like to take this opportunity to urge EPA to greatly increase its program funding for the BACT/LAER Clearinghouse. Since the inception of EPA's NSR reform efforts, one of the association's top priorities has been that the best and most cost-effective time to control a source is at the time of installation or modifications. By providing state and local agencies with the most recent BACT/LAER determinations, the Clearinghouse will play a critical role in ensuring that new or modified significant sources install BACT/LAER at the time of their construction. Moreover, a robust Clearinghouse would allow state and local agencies to make timely BACT/LAER determinations, thus providing industry with the timeliness and certainty they desire. This important step will greatly expedite information transfer, promote technical analyses and ensure equity in permit transactions. Therefore, the associations urge EPA to establish a robust Clearinghouse and offer the following recommendations for its development:

- EPA's BACT/LAER Clearinghouse should be web-based and function as a worldwide resource for control technology options.

- The Clearinghouse should be an EPA managed system with consistent entry by trained staff (approximately ten people in the regional offices and five people plus a supervisor at OAQPS), regular follow-up on entries and diligent quality control.

- In order to ensure that the information contained in the BACT/LAER Clearinghouse is timely and relevant, we support the concept that PSD and major NSR permits not take effect until state and local agencies enter them into the BACT/LAER Clearinghouse.

- The associations agree to identify a sub-group of state and local officials to work with EPA on Clearinghouse issues.

CONCLUSION

We hope these additional comments further clarify our position on the newly revised sector-based approach and the clean unit test proposal, as well as our most important outstanding issue in this process. Again, we would like to express our thanks to you and your staff for working closely with us on the issues to date and we look forward to continuing to work with you to reform this important program.

APPA / ALAPCO

STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS

ASSOCIATION OF LOCAL AIR POLLUTION CONTROL OFFICIALS

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

STATE AND LOCAL AGENCY GUIDING PRINCIPLES FOR NEW SOURCE REVIEW

The best time to control a source is at the time of its installation or modification.

We support the application of BACT and use of the "Top Down BACT Process."

New or modified sources must have legally enforceable limits on their future emissions. These emissions limits must be compatible with the SIP and should be analyzed at their future allowable rate.

Emission increases must be analyzed with regard to their potential ambient impact. The increases may not interfere with the attainment and maintenance of the NAAQS, or cause a violation of a PSD increment. The new source or modification should be analyzed with regard to toxics. The effect of any increase on air quality related values also must be analyzed.

The impact of future MACT and RACT controls on the new source review process is currently unknown but should be significant, and could lessen our anxiety about sources netting out of controls.

Sources should not be allowed to "net out" of control requirements (BACT or LAER).

New Source Performance Standards (NSPS) are not a good surrogate for BACT, since many are outdated and were never intended to represent BACT in the first place.

We support the RACT/BACT/LAER Clearinghouse and consider it reasonable to expect data entries by State and Local Agencies. We also support the concept of a major source application data sheet submission to the Clearinghouse.

Plantwide Applicability Limits (PALS) are supportable under Title V with all units identified and allowable emissions stated in the permit. However, even under the PAL concept, new units should apply BACT.

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We favor a simplification process which gives industry timeliness and certainty, but retains a strong technology requirement for all new or modified sources.

April 1994

Testimony of John A. Paul

on Behalf of the

State and Territorial Air Pollution Program Administrators

and the

Association of Local Air Pollution Control Officials

On the U.S. Environmental Protection Agency's

90-Day NSR Review Process

July 10, 2001

Good morning, my name is John Paul and I am the Supervisor of the Regional Air Pollution Control Agency, a six-county local agency, centered in Dayton, Ohio. I am here today representing STAPPA – the State and Territorial Air Pollution Program Administrators – and ALAPCO – the Association of Local Air Pollution Control Officials. STAPPA and ALAPCO are the two national associations representing air pollution control agencies in 54 states and territories and more than 165 major metropolitan areas across the United States. I am pleased to have this opportunity to present STAPPA and ALAPCO's comments on the U.S. Environmental Protection Agency's (EPA's) 90-day New Source Review (NSR) process.

STAPPA and ALAPCO have a long-standing interest in NSR. Over the past 25 years, we have worked with EPA, industry and environmental organizations on numerous NSR issues, including offsets in nonattainment areas, netting, the Best Available Control Technology (BACT)/Lowest Achievable Emissions Rate (LAER) Clearinghouse, top-down BACT and NSR reform.

Our message today on NSR is simple. As the primary implementers of NSR programs throughout the nation, we believe that the NSR requirements under the Clean Air Act are an essential tool, critical to state and local air pollution control agencies' ability to attain and maintain the health and welfare standards mandated in the Act. Quite simply, NSR provides state and local permitting agencies an opportunity to review new and modified stationary sources to ensure that they install the best available control technology available to minimize their impacts on ambient air quality. In addition, we strongly believe that the current NSR process in no way impedes the ability of sources to expand capacity or improve efficiency. In fact, our experiences have demonstrated that where the NSR process functions as it was originally designed – where sources notify permitting agencies of the construction of new sources, or of modifications to existing sources, and supply us with a well-prepared, complete permit application that commits to

the installation of the best control technology – the NSR process is both timely and efficient. It is only where industry has resisted the installation of good pollution control technology that the process becomes uncertain and time-consuming.

We base our comments on the hundreds of years of combined experience that we share as state and local permitting authorities. Furthermore, we are guided by a set of principles that the associations adopted in 1994 to assist us in our efforts to work with EPA in the agency's NSR reform process. The cornerstone of these principles is the concept that the best and most cost-effective time to control a source is at the time of its installation or modification, and that BACT and LAER should be applied in attainment and nonattainment areas, respectively. Consistent with this principle, the associations believe that a source's selection of BACT should be "top down" to ensure that sources apply the best controls, unless they can demonstrate that another control technology is more appropriate. In exchange for good controls, the associations are committed to providing industry with the timeliness and certainty they desire.

Our associations also hold the principle that NSR sources should not be allowed to "net out" of control requirements (BACT or LAER). This practice undermines the benefits that can be achieved by applying controls to new or modifying facilities. In fact, even EPA's June 22, 2001 NSR 90-day Review Background Paper states that the best time to control a source is at the time of installation. Yet, existing EPA policies allow new units at existing sources to net out of NSR requirements. This netting exemption completely contradicts EPA's stated position that good pollution control technology is necessary at the time of installation and we strongly recommend that as EPA considers changes to the current NSR process, it take this opportunity to eliminate netting.

As STAPPA and ALAPCO have participated in EPA's NSR reform efforts, we have used our NSR principles to evaluate draft proposals put forth by the agency. Accordingly, we have endorsed many of the concepts EPA proposed for clean unit exemptions, sector-based off ramps and plant-wide applicability limits as part of the agency's NSR reform efforts. We continue to support and work with EPA to further develop these concepts. Attached to my statement is a copy of our March 14, 2000 comments to EPA that further outlines our position on these draft proposals.

We have reviewed EPA's NSR 90-day NSR Review Background Paper and find it to be both accurate and useful. The document serves as an excellent primer for the NSR process, and provides interesting information on the impacts of the NSR process on both the refinery and utility industries. Moreover, we see nothing in the document that would indicate that the NSR process is onerous or burdensome to these industries. However, as EPA acknowledges in the document, there are some data gaps and STAPPA and ALAPCO will work with state and local permitting agencies to fill those gaps.

Our associations are currently developing a detailed set of formal written comments on the NSR background paper and we will submit those comments to you by the July 27, 2001 comment deadline. On behalf of STAPPA and ALAPCO, thank you

again for this opportunity to present our views on some fundamental NSR principles. I am happy to answer any questions you might have.

STAPPA / ALAPCO

STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS

ASSOCIATION OF LOCAL AIR POLLUTION CONTROL OFFICIALS

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

May 5, 2000

The Honorable Bob Smith, Chairman
Environment and Public Works Committee
United States Senate
307 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Smith:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), we would like to take this opportunity to voice our support for increased funding for the U.S. Environmental Protection Agency's (EPA's) Best Available Control Technology (BACT)/Lowest Achievable Emissions Rate (LAER) Clearinghouse.

As the primary implementers of the Clean Air Act's New Source Review permit program, state and local air pollution control agencies are responsible for making the BACT/LAER determinations for new or modified sources. These determinations provide us with one of the most critical tools we need to protect air quality for the future – the ability to ensure that a source installs good controls during its initial construction or when it undertakes a major modification.

However, the process of identifying proper BACT/LAER determinations for individual source installations is labor intensive and can be the source of uncertainty and delay in the permit process. A key component in the identification and installation of good controls is a robust BACT/LAER Clearinghouse, managed by EPA, with consistent entry of BACT/LAER determinations by trained staff, regular follow-up on entries and diligent quality control. Unfortunately, the current EPA Clearinghouse, which was established in the 1970s, falls short of these goals. The Clearinghouse functions solely as a passive repository for BACT/LAER determinations entered by state and local permitting authorities; it does not have any personnel to follow up on BACT/LAER entries to ensure that they are timely or perform quality control. In addition, the Clearinghouse does not offer any technical support to state or local permitting authorities. If the Clearinghouse is to provide state and local permitting authorities with the technological assistance they need, it must be a well-managed, user-friendly web site staffed by EPA personnel that will ensure that the BACT/LAER information is timely and quality-controlled.

In FY 2000, the EPA BACT/LAER Clearinghouse received an annual funding of $80,000. The associations believe that this funding level is insufficient for EPA to upgrade the BACT/LAER Clearinghouse in the manner necessary. Therefore, we urge

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you to recommend to your colleagues on the Senate Appropriations Committee that EPA's BACT/LAER Clearinghouse funding level be increased to $2.1 million in FY 2001. These figures are based on a Clean Air Act Advisory Group subcommittee's estimate of $600,000 for startup in the first year, plus an annual operating cost of $1.5 million. This funding level will allow EPA to develop and manage a more robust BACT/LAER Clearinghouse that will greatly expedite information transfer, promote technical analyses, and ensure equity in permit transactions. By providing state and local agencies with the most recent BACT/LAER determinations, the EPA managed Clearinghouse will play a critical role in ensuring that new or modified significant sources install BACT/LAER at the time of their construction. Moreover, a robust Clearinghouse would allow state and local agencies to make timely BACT/LAER determinations, thus providing industry with the timeliness and certainty they desire.

Thank you very much for your assistance in this critical matter. We hope we can count on your support. If we can answer any questions or provide you with any additional information, please feel free to contact either of us, or S. William Becker, Executive Director of STAPPA and ALAPCO.

Sincerely,

William O'Sullivan
STAPPA Chair
New Source Review
Subcommittee

John Paul
ALAPCO Chair
New Source Review
Subcommittee

Cc: Senator Max Baucus, Ranking Member
Senate Environment and Public Works Committee

Senator Ted Stevens, Chairman
Senate Appropriations Committee

Senator Robert C. Byrd, Ranking Member
Senate Appropriations Committee

Senator Christopher S. Bond, Chairman
Senate Appropriations Committee, Subcommittee on Veterans Affairs, Housing and Urban Development and Independent Agencies

Senator Barbara A. Mikulski, Ranking Member
Senate Appropriations Committee, Subcommittee on Veterans Affairs, Housing and Urban Development and Independent Agencies

Geri O'Sullivan <gosulliv@sso.org>
10/31/2001 04:41:05 PM

Record Type: Record

To: Edward A. Boling Energy Task Force/CEQ/EOP

cc:

Subject: STAPPA/ALAPCO Comments

October 31, 2001

James L. Connaughton, Chairman
Council on Environmental Quality
Executive Office of the President
17th and G Streets, NW
Washington, DC 20503

Dear Mr. Connaughton:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), thank you for the opportunity to provide comments on the August 20, 2001 Federal Register notice published by the Council on Environmental Quality (CEQ) soliciting comments on the nature and scope of the federal interagency task force (task force) established pursuant to Executive Order 13212 to explore ways to expedite energy projects (66 Federal Register 43586). Specifically, the task force will work with and monitor the efforts of federal agencies to expedite these agencies review of permits, or take other actions necessary to accelerate the completion of energy-related projects, while maintaining safety, public health and environmental protections.

STAPPA and ALAPCO commend both the CEQ and the Administration for recognizing the importance of environmentally sound production and transmission of energy and for exploring ways to expedite the permitting process. As the primary implementers of permit programs under the Clean Air Act (Act) throughout the nation, we are extremely cognizant of the need for efficient clean energy production. Toward that end, we have continually given high priority to those permits that incorporate the cleanest, most efficient energy-producing technology. As a result, in the last few years, state and local agencies have permitted tens of thousands of megawatts (MW) of new electrical generation, with additional tens of thousands of MW currently being processed (attached is a copy of our associations July 27, 2001 comment letter, submitted as part of EPAs recent 90-day NSR review process, outlining these projects in detail). However, we also recognize that there are aspects of the air permitting process that can be improved upon, and offer the following comments and recommendations in that regard.

First and foremost, STAPPA and ALAPCO believe that the air permitting process is working and is not preventing energy expansion or efficiency improvement. However, we also recognize that some aspects of the permitting process, such as New Source Review (NSR), while not preventing energy expansion or efficiency, can be improved. Specifically, while we believe that NSR works well for new sources, improvements can be made concerning the application of NSR to modifications of existing sources. Toward that end, for the last eight years, we have participated in NSR reform efforts, using our long-standing NSR principles to evaluate draft proposals put forth by EPA, industry and environmental groups. We have endorsed many of the concepts EPA proposed for clean unit exemptions, sector-based off ramps and plant-wide applicability limits as part of the agency□s NSR reform efforts. Most recently, we have participated in EPA□s 90-day NSR review effort, and we again refer you to the attached July 27, 2001 comments, which, along with attachments and our July 2001 testimony at EPA□s NSR public stakeholder meetings, comprise the position the associations□ have held on NSR reform. We strongly encourage the task force to coordinate its permit streamlining effort with EPA□s well-established NSR reform efforts and to incorporate EPA□s 90-day review docket by reference into any task force docket.

We also believe that any effort to streamline the permitting process should include an upgrade of EPA□s Best Available Control Technology (BACT)/Lowest Achievable Emissions Rate (LAER) Clearinghouse. As the primary implementers of the NSR permit program, state and local air agencies are responsible for making the BACT/LAER determinations for new or modified sources. These determinations provide us with one of the most critical tools we need to protect the nation□s air quality in the future □ the ability to ensure that a source installs good controls during its initial construction or when it undertakes a major modification. For this reason, we supported the Senate Appropriations Committee□s increase of EPA□s BACT/LAER Clearinghouse funding level to $2.1 million in FY 2001 to upgrade the Clearinghouse and have attached for your review a copy of our May 5, 2000 letter to Senator Bob Smith, then Chairman of the Senate Environment and Public Works Committee, in support of that increased funding. We strongly believe that the increased funding level will allow EPA to develop and manage a more robust BACT/LAER Clearinghouse that will greatly expedite information transfer, promote technical analyses and ensure equity in permit transactions. By providing state and local agencies, as well as the regulated community, with the most recent BACT/LAER determinations, an EPA-managed Clearinghouse will play a critical role in ensuring that new or modified significant sources install BACT/LAER at the time of their construction. Moreover, a robust Clearinghouse would allow state and local agencies to make timely BACT/LAER determinations, thus providing industry with the timeliness and certainty they desire. We have participated in, and are greatly encouraged by, the initial steps EPA has taken as a result of this funding increase to upgrade the Clearinghouse □ including stakeholder meetings and workshops □ and we are committed to working with the agency in this effort. As the task force moves forward to explore ways to streamline the permitting process, we urge that it support EPA in this important endeavor.

Finally, as the task force identifies ways to streamline the permitting process, we caution that it not weaken or eliminate important aspects of

the program. For example, we urge that the task force maintain a process that allows for public comment. A public comment process affords state and local air agencies an invaluable opportunity to interact with the public and make modifications to the permitting process, where appropriate. This process is often our primary contact with the public on air quality issues that affect them, and it is critical to our efforts to protect and improve local air quality. Additionally, we believe that modeling to predict the air quality impacts of new sources must remain a part of the permitting process. Air quality impact modeling provides regulators with an essential tool for assuring that the health and welfare standards mandated in the Act are protected.

Again, thank you for the opportunity to comment on the scope and nature of the work of the task force. If you have any further questions or desire additional information, please contact either of us or Geri O□Sullivan of STAPPA and ALAPCO.

Sincerely,

John A. Paul
ALAPCO Chair
NSR Subcommittee

William O□Sullivan
STAPPA Chair
NSR Subcommittee

Attachments

ATTACHMENTS

July 27, 2001

Docket # A-2001-19
Air and Radiation Docket and Information Center
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

To Whom It May Concern:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), thank you for the opportunity to provide comments on the U.S. Environmental Protection Agency□s (EPA□s) June 22, 2001 New Source Review (NSR) 90-Day Review Background Paper (background paper). The background paper, which was prepared in response to a directive in the President□s May 2001 National Energy Policy to examine NSR regulations, represents the agency□s first step in the overall review process to determine what, if any, impact the NSR process has on investment in new

utility and refinery generation capacity, energy efficiency and environmental protection. Specifically, the purpose of the background paper is to (1) provide background on the NSR program and its implementation; (2) provide an introduction to some of the information EPA is developing for the final report; and (3) request comment upon the information in the document and solicit additional information needed to complete EPA□s review.

STAPPA and ALAPCO commend EPA for its speedy and thorough response to the National Energy Policy directive. We have reviewed the background paper and find it to be both accurate and useful. The document serves as an excellent primer for the NSR process, and provides helpful information on the impacts of the NSR process on both the refinery and utility industries. However, in light of the broad context of this review process, we would like to share our general comments on the overall NSR process, as well as provide EPA with the additional information it is seeking in the background paper.

General Comments:

STAPPA and ALAPCO have a long-standing interest in NSR. Over the past 25 years, we have worked with EPA, industry and environmental organizations on numerous NSR issues, including offsets in nonattainment areas, netting, the Best Available Control Technology (BACT)/Lowest Achievable Emissions Rate (LAER) Clearinghouse, top-down BACT and NSR reform.

As the primary implementers of NSR programs throughout the nation, we believe that the NSR requirements under the Clean Air Act are an essential tool, critical to state and local air pollution control agencies□ ability to attain and maintain the health and welfare standards mandated in the Act. Quite simply, NSR provides state and local permitting agencies an opportunity to review proposed new and modified stationary sources to ensure that they install the best available control technology available to minimize their impacts on ambient air quality. For example, NSR has resulted in millions of tons of reductions of nitrogen oxides (NOx) and sulfur dioxides (SO2) that would not have otherwise occurred. Therefore, any changes to the current NSR process must serve to better protect public health and welfare, as well as strengthen our ability to do so.

In addition, the information we have received from state and local permitting agencies throughout the nation indicates that the current NSR process does not prevent sources from expanding capacity or improving efficiency. In fact, our experiences have demonstrated that where the NSR process functions as it was originally designed □ where sources notify permitting agencies of the proposed construction of new sources, or of modifications to existing sources, in a timely manner and supply us with a well-prepared, complete permit application that commits to the installation of the best control technology □ the NSR process can readily fit within the overall planning process of a project.

We base our comments on the hundreds of years of combined experience that we share as state and local permitting authorities. Furthermore, we are guided by a set of principles that the associations adopted in 1994 to assist us in our efforts to work with EPA in the agency□s NSR

reform process. The cornerstone of these principles is the concept that the best and most cost-effective time to control a source is at the time of its installation or modification, and that BACT and LAER should be applied in attainment and nonattainment areas, respectively. Consistent with this principle, the associations believe that a source□s selection of BACT should be □top down□ to ensure that sources apply the best controls, unless they can demonstrate that another control technology is more appropriate.

Our associations also hold the principle that NSR sources should not be allowed to □net out□ of control requirements (BACT or LAER). This practice undermines the benefits that can be achieved by applying controls to new or modifying facilities. In fact, the background paper states that the best time to control a source is at the time of installation. Yet, existing EPA policies allow new units at existing sources to net out of NSR requirements. This netting exemption is inconsistent with EPA□s stated position that good pollution control technology is necessary at the time of installation; accordingly, STAPPA and ALAPCO strongly recommend that as EPA considers changes to the current NSR process, it take this opportunity to eliminate netting.

We want to be clear that while we do not believe that the NSR process is preventing industry from expanding or increasing their efficiency, we do acknowledge that the NSR process can be improved. For the last eight years, we have participated in NSR reform efforts, using our NSR principles to evaluate draft proposals put forth by the EPA, industry and environmental groups. We have endorsed many of the concepts EPA proposed for clean unit exemptions, sector-based off ramps and plant-wide applicability limits as part of the agency□s NSR reform efforts. We continue to support and work with EPA to further develop these concepts. Attached are numerous comments we have submitted to EPA over the last few years, including a March 14, 2000 letter stating our positions on EPA□s 1996 NSR reform proposal and the various industry proposals, a May 5, 2000 memorandum detailing our response to EPA□s April 26, 2000 NSR proposals, as well as our 1994 principles, that further outline our position on these draft proposals and NSR reform.

However, we also want to be clear that while the current NSR system should be reformed, tens of thousands of megawatts (MW) of new power generator capacity have been permitted under the current process. Even in cases regarding modifications to existing sources, where improvements to the current process would be most useful, permitting agencies have been able to address the vast majority of changes in a timely manner under the current NSR process.

Data Gap Responses

In additional to our general comments on the NSR process, we would like to respond to EPA□s request for specific information in the background document. We hope that our responses, which are based on an informal survey of our membership, will provide EPA with the additional information necessary to complete its review.

Information on the Impact of NSR on New Sources

(1) The Amount of Time Spent in Pre-Permit Application Activities

The amount of time a state or local agency spends on pre-permit application activities varies with the complexity of the particular project. Easier projects can be disposed of within a few hours, while some of the most complicated projects can require 30 or more hours of pre-application meetings and discussion. In general, when the industry contacts the agency early in the planning process, pre-application activities can be completed with little or no impact on the overall timing of the project.

(2) Impact Of NSR Requirements on Investment in Expansions of, or New, Utility and Refinery Capacity

The idea that NSR is restricting energy projects is not supported by the experiences of state and local permitting agencies. In the last few years, state and local agencies have permitted tens of thousands of MW of new electrical generation, with additional tens of thousands of MW currently being processed. For example,

· Washington State has approved 3,000 MW of new electrical generation, with another 6,000 MW currently being processed.

· Georgia has permitted 14 new power plants, as well as an expansion of one power plant in the last five years, for a total capacity of 10,000 MW. In addition, Georgia is currently processing applications for nine new power plants with a total capacity of 6,500 MW.

· New Hampshire has two combined-cycle, natural gas-fired power plants under construction for a total of 1,345 MW.

· Since 1997, Wisconsin has issued air pollution control permits authorizing construction or modification of 10 power plants generating 2,600 MW of energy capacity, and is currently reviewing construction permits for an additional 13 power plants that would generate 6,700 MW.

· In California, there are 46 new power projects, including major projects over 50 MW in size, as well as smaller □peaker□ projects, that have been approved for construction, totaling 12,000 MW of capacity. In addition, there are approximately 22 projects totaling 6,000 MW that are currently under consideration for approval, and 30 more projects totaling 10,000 MW that have just been announced.

· The Missouri Air Pollution Control Program has evaluated 13 gas turbine projects in the last five years. These projects involved 34 separate turbines producing approximately 3,600 MW of combined electrical output. Missouri currently has two projects pending with 13 turbines and about 1,700 additional MW.

· Connecticut, which has a peak in-state demand of 6,000 MW, has permitted over 2,500 MW in new clean generation since 1997.

· Since January of 1997, Texas has permitted over 36,000 MW of electrical generating capacity, with an additional 10,000 MW of capacity currently undergoing permit review.

· Since 1997, Massachusetts has issued NSR permits for a dozen new or

modified electric generating facilities, amounting to approximately 5,000 MW of new capacity.

· In the past year, Arkansas has issued permits for 5,540 MW of capacity, for a total of 6,423 MW since May 1999. Furthermore, the agency has almost 6,000 MW under review, including a 1,800 MW permit that is currently in the public comment phase.

· Since mid-1998, Florida has permitted approximately 15,000 MW of additional clean electrical generating capacity, with an additional 8,000 MW of capacity currently undergoing permit review. Because several of these projects involved repowering while increasing the capacity of grandfathered units, Florida estimates that NOx emissions will decrease by about 20,000 tons per year, while SO2 emissions will decrease by over 100,000 tons per year, even with the 23,000 MW increase.

· New Jersey has permitted 2,500 MW of new electric generation in the last two years and is scheduled to propose another 1,500 MW within a month. In addition, New Jersey is actively working on the review of 6,000 MW of applications, with another 2,000 MW of projects in the preapplication stage. This is a total of 12,000 MW that the agency either has approved or expects to approve between 1999 and 2002. This represents more than a 60% increase in the approximately 18,000 MW of existing capacity in New Jersey.

These statistics clearly demonstrate that NSR is not preventing energy expansion or improved efficiency in the United States. Moreover, the timing of the entire NSR process □ from pre-application to final permit approval □ does not appear to be an impediment to either capacity expansion or efficiency improvement. For example, Georgia□s average permitting time ranged from 2 to 12 months, with an average time of five and one-half months. Some of these were PSD □avoidance permits.□ Just counting PSD permits, the permitting time ranged from 4 to 12 months, with an average time of seven months.

In Wisconsin, projects that have completed the NSR/PSD process have done so in an average of 51 days from the receipt of a complete permit application (174 days from the initial receipt of the application materials). This includes the public comment period. There have been three exceptions to the rule □ projects that took an average of 283 days to complete. However, in each of these cases, the process was delayed due to a dispute over pollution control technology □ it took an average of 222 days to resolve on BACT/LAER issues. Once these issues were resolved, the average permit time was 61 days.

Even in the situation of longer permit review timeframes for new sources, it is clear that when permit review is managed in a professional manner, with both the applicant and the permitting agency using standard project management procedures, the review process can readily fit within the process for electric generators to plan for and obtain approval to connect to the electrical grid.

(3) The Significance of the Cost of Offsets in Nonattainment Areas Related to the Annualized Cost of Control

The costs of offsets in nonattainment areas is minor in comparison to the costs of the overall project and does not prevent the expansion of energy capacity or efficiency improvements. This is true even in California, where offset availability has become constrained in some areas and prices have increased. However, California□s own estimates show that the costs of offsets represent anywhere from less than one percent to not more than six percent of the total project costs of a new power plant.

Information on the Impacts of NSR on Existing Sources

(1) Ability to Undertake Pollution Prevention or Energy Efficiency Projects

Since a true pollution prevention or energy efficiency project should result in decreased emissions, we believe that NSR has not affected the ability of existing sources to undertake these types of programs. Moreover, some state and local agencies, such as New Hampshire, have adopted pollution prevention/NSR policies and guidelines to help sources address this issue.

Conclusion

Based on our review of the background document, as well as data provided by state and local permitting authorities, it is clear that the current NSR process does not prevent sources from expanding capacity or improving efficiency. Moreover, we believe that the NSR requirements under the Clean Air Act are an essential tool, critical to state and local air pollution control agencies□ ability to attain and maintain the health and welfare standards mandated in the Act. However, we also believe that the NSR program can, and should, be improved. We think improvements, including eliminating the netting loophole for new sources, could provide greater environmental protection. Toward that end, we look forward to our continued participation in EPA□s NSR reform efforts.

Again, thank you for the opportunity to comment on EPA□s June 22, 2001 New Source Review (NSR) 90-Day Review Background Paper. If you have any further questions or desire additional information, please contact either of us or Geri O□Sullivan of STAPPA and ALAPCO.

Sincerely,

John A. Paul
ALAPCO Chair
NSR Subcommittee

William O□Sullivan
STAPPA Chair
NSR Subcommittee

Cc: Bill Harnett

Michael Ling

March 14, 2000

John Seitz
Director
Office of Air Quality Planning and Standards (MD-10)
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711

Dear John:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), and as a follow-up to the National State and Local Air Quality Roundtable Meeting convened by EPA Assistant Administrator Robert Perciasepe on Sunday, February 6, 2000, we would like to reiterate the associations top priorities on the agency s 1996 base proposal and the various industry proposals for NSR reform.

Commensurate with EPA s NSR reform stakeholder process begun in 1993, STAPPA and ALAPCO adopted a set of principles to serve as guidance for our associations in any NSR reform effort. Chief among these principles is that the best and most cost-effective time to control a source is at the time of installation or modification. The associations also oppose netting for technology review and urge that this practice be eliminated.

To aid the process of identification and installation of good controls EPA should greatly increase its program support for the Best Available Control Technology (BACT)/Lowest Achievable Emissions Rate (LAER) Clearinghouse. This important step will greatly expedite information transfer, promote technical analyses, and ensure equity in permit transactions. STAPPA and ALAPCO believe EPA s BACT/LAER Clearinghouse should be web-based and function as a worldwide resource for control technology options. Moreover, STAPPA and ALAPCO recognize that the success of the BACT/LAER Clearinghouse depends upon the information it contains; therefore, we support the concept that PSD and major NSR permits not take effect until state and local agencies enter them into the BACT/LAER Clearinghouse. By providing state and local agencies with the most recent BACT/LAER determinations, the Clearinghouse will play a critical role in ensuring that new or modified significant sources install BACT/LAER at the time of their construction. Moreover, a robust Clearinghouse would allow state and local agencies to make timely BACT/LAER determinations, thus providing industry with the timeliness and certainty they desire. Our associations agree to identify a sub-group of state and local officials to work with EPA on Clearinghouse issues.

With regard to EPA s 1996 NSR reform base proposal, STAPPA and ALAPCO would like to clarify our position on the clean unit concept.

Originally, the associations opposed this concept based upon EPA□s proposed ten-year look back. However, if the clean unit determination were based upon a current top-down determination of BACT, STAPPA and ALAPCO could support the concept. The associations believe the clean unit concept could provide all industries with the opportunity to gain timeliness and certainty on future operations, while at the same time achieving BACT control on an existing source.

With regard to the sector-based off ramp proposal submitted by the Utility Air Regulatory Group (UARG), STAPPA and ALAPCO believe the following changes would bring this proposal in line with the associations□ principles, and could serve as a basis for further discussions:

· The off ramp would apply to coal-fired boilers only.

· Existing utility coal-fired boilers that have operated for 30 years or more should be placed on a schedule for upgrade of air pollution control equipment. Upgrade of all units currently over 30 years of age should be accomplished as soon as practical (we feel 2010 is a reasonable end date, with significant progress by 2005).

· Upgrade of air pollution control equipment should be to levels that represent BACT and should apply to all criteria pollutants. The BACT control levels should be established by EPA and should be revised on a periodic basis. Additionally, EPA should establish a process that will allow for the application of harmonized controls for mercury and carbon dioxide.

· Emissions trading could be allowed among coal-fired units to provide the utility industry flexibility in attaining BACT levels over a period of time. However, at the close of the control period (2010 is suggested for the first group of units) each individual unit should be controlled to BACT levels.

· Once controlled to BACT levels, an existing coal-fired unit would be governed by the clean unit concept for future modifications (judged on an allowables-to-allowables test for applicability).

STAPPA and ALAPCO believe that the above recommendations would provide the utility industry with the timeliness and certainty they desire, while at the same time ensuring good controls on all coal-fired units. Units would be brought into the program on an age basis and required to meet known control levels equal to BACT and established by EPA. State and local agencies would work with the industry to assure the BACT levels are attained. Additionally, the future allowables-to-allowables test should resolve the industry□s questions regarding □routine maintenance, repair and replacement.□

With regard to the Plant-wide Applicability Limit (PAL) proposal, although there are a few outstanding issues, if these issues are addressed in accordance with STAPPA and ALAPCO□s principles, it could result in a proposal that would be acceptable to our members. Our recommendations on those issues are as follows:

· The baseline for an actuals-based PAL should be the last two years of operation, with the possibility of substituting a more representative period of time if the industry makes a convincing argument, using PSD contemporaneous guidelines.

· Significant and major new units (federal NSR/PSD definitions) added under a PAL, whether it is actuals-based or allowables-based, should meet federal BACT.

· The allowables-based PAL would be a declining cap that would equate to BACT performance on all units significant and larger at the plant. The company would work with the state or local agency to establish a schedule for attaining the BACT performance level for existing sources within 10 years. Significant progress must be made to meet the BACT performance level in the early years of the PAL implementation.

· A state or local agency may include minor sources in the PAL.

· Partial PALs (e.g., for a boiler house, a production line, or a group of printers) are acceptable.

· The issue of LAER for PAL facilities located in nonattainment areas has not been formally addressed by STAPPA and ALAPCO; however, the associations are not opposed to the use of BACT as the basis for the PAL.

· To the extent that a state rule implementing MACT requires a reduction in the pollutant covered by the PAL, the PAL should be reduced to the extent necessary to meet the MACT. For example, if a source meets a VOC-based MACT through VOC substitution, the PAL would not be reduced.

The complex manufacturing proposal still contains numerous problematic features that must be resolved to make it acceptable to our members, including the following:

· The proposal□s concept to eliminate netting is not clearly developed.

· The proposal speaks to future modifications as based on changes to maximum achievable rates, rather than the current actual-to-potential test or the discussed potential-to-potential test. The significance of this proposal is unclear to us.

· The industry-defined levels for the control of new units are based on an after-control potential emissions test. Thus, a new unit could be controlled to 39 tons per year VOC and escape the BACT control requirement defined for a significant source. Additionally, the three levels defined for controls (levels A, B, and C) add confusion to the process. STAPPA and ALAPCO recommend BACT on new or modified units greater than the significance levels (uncontrolled potential-to-emit).

· Aggregation of units is not discussed. Instead, the proposal commits to further discussions on this issue.

· A new test for □reconstruction□ is suggested, but most of the details of this test are unresolved. STAPPA and ALAPCO are concerned with the

limited time period suggested for aggregation.

· An air quality impact test is included in the basic program flow chart, but this test is not triggered unless there is an increase in the maximum hourly achievable rate. STAPPA and ALAPCO are interested in preserving the right to require an air quality impact test whenever there is an increase in actual emissions.

· There is a voluntary emission reduction program proposal that would apparently reward a company with a 15-year exemption from NSR if the company agrees to install BACT within a specified timeframe. STAPPA and ALAPCO would prefer the real-time clean unit exemption that EPA is currently discussing.

In addition to these issues, there are various other significant issues that will need to be resolved as this process proceeds. For instance, at the February 28, 2000 Senate field hearing in Cincinnati, Ohio on the NSR program, the definition of □routine maintenance, repair and replacement□ was a prime topic of testimony, as was concern with the time it takes for states and localities to review permit applications and issue permits in final form. Additionally, we support the concept of pollution prevention and would like to see its role in NSR more clearly defined. STAPPA and ALAPCO request further discussion with EPA on these and other outstanding issues.

We hope this review of our key NSR reform principles and concerns helps to clarify our most important outstanding issues in this process. EPA staff have been very cooperative in working on the issues to date. We look forward to continuing to work with you and your staff to resolve this important program.

Sincerely,

John A. Paul — ALAPCO Chair, NSR Subcommittee
William O□Sullivan — STAPPA Chair, NSR Subcommittee

MEMORANDUM

TO: Bill Harnett and Karen Blanchard

FROM: STAPPA and ALAPCO□s NSR Subcommittee

DATE: May 5, 2000

RE: STAPPA/ALAPCO□s NSR Subcommittee□s Revised Comments on EPA□S APRIL 6, 2000 NSR Proposals

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BACKGROUND

On April 6, 2000, EPA provided STAPPA and ALAPCO□s New Source Review (NSR) subcommittee with a more detailed NSR sector-based approach and a revised clean unit test proposal. Since that time, the associations have participated in a number of conference call with EPA to discuss the revised proposals, and we would like to take this opportunity to offer the following additional comments and recommendations on the April 6 proposals, as well as reiterate one of the associations□ top priorities regarding NSR reform.

NSR SECTOR-BASED APPROACH

With regard to EPA□s sector-based approach for NSR reform, we offer the following additional comments and recommendations:

· A mandatory program is preferred over voluntary programs. A mandatory program will ensure all sources in a common category are subject to the same standards and will make emission trading more feasible. A common program for common sources is also more efficient from an implementation perspective.

· The concept of "useful life" should be used as an applicability trigger; it is simple, logical and justifiable from a NSR review perspective. Useful life can be used to provide a phase-in of sources over time as their useful life is reached and automatically continues the sector based program into the future.

· Emission trading works best with mandatory programs. Voluntary programs create issues, such as selective groupings of sources to avoid BACT, which may make trading inappropriate. NSR avoidance should not be a goal of trading. All units should be upgraded or replaced to meet BACT at the end of their useful life. Trading is appropriate to provide flexibility for existing sources that are beyond their useful life, to catch up with BACT. Trading could be used to meet interim goals on the road to BACT for all units. Trading should be limited to NOx and SO2.

· Reasonable time should be provided for existing units beyond their useful life to be replaced or retrofit. We believe requiring BACT for ten years is a reasonable time frame for BACT catch up, provided there is significant progress in the first five years. For extraordinary circumstances (e.g. replacement versus retrofit of a unit) a maximum of 15 years could be considered for a limited number of units.

· BACT should be defined periodically, no less than every five years. Those units, for which construction of BACT has not commenced when EPA establishes a new BACT, should meet the latest pre-defined BACT.

· For combustion sources, sector-based NSR should address NOx, SO2, particulates and CO. For some noncombustion sectors, VOC would need to be added. While mercury and CO2 need not be part of this NSR reform package, it would be appropriate to harmonize efforts for control of these pollutants within the NSR BACT catch up time frame.

· For combustion sources performance standards should be set for CO to avoid significant increases in emissions of products of incomplete combustion (PICs).

· Ambient modeling should be a baseline requirement for each plant to determine if there are existing violations of the NAAQS at the maximum potential-to-emit (PTE), so these can be addressed along with the BACT retrofits. Also, certain changes to stack discharge parameters after the baseline PTE modeling should be remodeled to assure continuing protection of the NAAQS.

· New units over significant emission levels should be subject to normal NSR, including a top down BACT analysis. Netting should not be used to avoid NSR for new units. Pre-defined BACT for categories of new units should be considered.

CLEAN UNIT TEST PROPOSAL

As we stated in our March 14, 2000 comment letter to EPA, STAPPA/ALAPCO supports EPA's clean unit concept. We see the development and use of this concept as providing timeliness and certainty to the NSR process and benefit to the environment. The associations believe the clean unit concept could provide all industries with the opportunity to gain timeliness and certainty on future operations, while at the same time achieving BACT control on an existing source. Therefore, STAPPA/ALAPCO encourages EPA to make this Clean Unit Test a core element in the NSR reform process, and offer the following comments and recommendations:

· Development of the Clean Unit Test should encourage the application of BACT on existing units (especially when a facility is otherwise controlling emissions to meet MACT or RACT limits).

· The development of the clean unit lists should serve to quickly define BACT/LAER for new sources and provide increased national consistency in these determinations.

· For significant and larger units installed under a PAL, the clean unit lists could serve as pre-defined control levels that would be acceptable to the state or local agency.

· Pre-defined BACT/LAER would increase timeliness in the processing of permits to install and free up state and local resources for other tasks.

· In order to assure the clean unit lists are accurate and relevant, we emphasize the need for the recommended strengthening of the RACT/BACT/LAER Clearinghouse.

· With regard to the eligibility of existing sources for the clean unit exemption, the associations recommend a two-year look-back period. However, a unit which meets the clean unit performance emissions levels and has had its ambient impact modeled at allowable levels could arguably be eligible for designation.

· Implementation of the clean unit exemption could be accommodated through permits to install (PTIs) or Title V permits.

· The lifetime of the clean unit exemption could be a default ten years, with monitoring and record keeping requirements as part of the

implementing permit. Periods less than or beyond the default ten years could be established on a unit category basis.

· When an existing unit applies controls sufficient to meet the clean unit test, we believe the emission reductions below SIP allowables should be eligible for meeting the offset requirements of new units. As long as the excess emission reductions are not used to net a new unit out of review, we believe the emission reductions otherwise meet the offset requirements.

· With regard to the issue of debottlenecking, we believe that Title V permits could eliminate future debottlenecking problems by specifying unit-by-unit emission allowables. As long as emission units at a facility do not exceed their allowables as stated in their Title V permit, debottlenecking should not present a problem.

· Ambient air impact analyses should be performed by any facility anticipating future increases in actual emissions up to allowable levels. If an analysis shows acceptable conditions at allowable emissions, then the clean unit should be free to increase emissions to these levels at any time in the future.

· We believe the above ambient air impact analyses would alleviate any Environmental Justice issues associated with the clean unit test.

BACT/LAER CLEARINGHOUSE

STAPPA and ALAPCO would also like to take this opportunity to urge EPA to greatly increase its program funding for the BACT/LAER Clearinghouse. Since the inception of EPA□s NSR reform efforts, one of the association□s top priorities has been that the best and most cost-effective time to control a source is at the time of installation or modifications. By providing state and local agencies with the most recent BACT/LAER determinations, the Clearinghouse will play a critical role in ensuring that new or modified significant sources install BACT/LAER at the time of their construction. Moreover, a robust Clearinghouse would allow state and local agencies to make timely BACT/LAER determinations, thus providing industry with the timeliness and certainty they desire. This important step will greatly expedite information transfer, promote technical analyses and ensure equity in permit transactions. Therefore, the associations urge EPA to establish a robust Clearinghouse and offer the following recommendations for its development:

· EPA□s BACT/LAER Clearinghouse should be web-based and function as a worldwide resource for control technology options.

· The Clearinghouse should be an EPA managed system with consistent entry by trained staff (approximately ten people in the regional offices and five people plus a supervisor at OAQPS), regular follow-up on entries and diligent quality control.

· In order to ensure that the information contained in the BACT/LAER Clearinghouse is timely and relevant, we support the concept that PSD and major NSR permits not take effect until state and local agencies enter them into the BACT/LAER Clearinghouse.

· The associations agree to identify a sub-group of state and local officials to work with EPA on Clearinghouse issues.

CONCLUSION

We hope these additional comments further clarify our position on the newly revised sector-based approach and the clean unit test proposal, as well as our most important outstanding issue in this process. Again, we would like to express our thanks to you and your staff for working closely with us on the issues to date and we look forward to continuing to work with you to reform this important program.

STATE AND LOCAL AGENCY GUIDING PRINCIPLES FOR NEW SOURCE REVIEW

The best time to control a source is at the time of its installation or modification.

We support the application of BACT and use of the □Top Down BACT Process.□

New or modified sources must have legally enforceable limits on their future emissions. These emissions limits must be compatible with the SIP and should be analyzed at their future allowable rate.

Emission increases must be analyzed with regard to their potential ambient impact. The increases may not interfere with the attainment and maintenance of the NAAQS, or cause a violation of a PSD increment. The new source or modification should be analyzed with regard to toxics. The effect of any increase on air quality related values also must be analyzed.

The impact of future MACT and RACT controls on the new source review process is currently unknown but should be significant, and could lessen our anxiety about sources netting out of controls.

Sources should not be allowed to □net out□ of control requirements (BACT or LAER).

New Source Performance Standards (NSPS) are not a good surrogate for BACT, since many are outdated and were never intended to represent BACT in the first place.

We support the RACT/BACT/LAER Clearinghouse and consider it reasonable to expect data entries by State and Local Agencies. We also support the concept of a major source application data sheet submission to the Clearinghouse.

Plantwide Applicability Limits (PALS) are supportable under Title V with all units identified and allowable emissions stated in the permit. However, even under the PAL concept, new units should apply BACT.

We favor a simplification process which gives industry timeliness and certainty, but retains a strong technology requirement for all new or modified sources.

April 1994

Testimony of John A. Paul

on Behalf of the

State and Territorial Air Pollution Program Administrators

and the

Association of Local Air Pollution Control Officials

On the U.S. Environmental Protection Agency□s

90-Day NSR Review Process

July 10, 2001

Good morning, my name is John Paul and I am the Supervisor of the Regional Air Pollution Control Agency, a six-county local agency, centered in Dayton, Ohio. I am here today representing STAPPA □ the State and Territorial Air Pollution Program Administrators □ and ALAPCO □ the Association of Local Air Pollution Control Officials. STAPPA and ALAPCO are the two national associations representing air pollution control agencies in 54 states and territories and more than 165 major metropolitan areas across the United States. I am pleased to have this opportunity to present STAPPA and ALAPCO□s comments on the U.S. Environmental Protection Agency□s (EPA□s) 90-day New Source Review (NSR) process.

STAPPA and ALAPCO have a long-standing interest in NSR. Over the past 25 years, we have worked with EPA, industry and environmental organizations on numerous NSR issues, including offsets in nonattainment areas, netting, the Best Available Control Technology (BACT)/Lowest Achievable Emissions Rate (LAER) Clearinghouse, top-down BACT and NSR reform.

Our message today on NSR is simple. As the primary implementers of NSR programs throughout the nation, we believe that the NSR requirements under the Clean Air Act are an essential tool, critical to state and local air pollution control agencies□ ability to attain and maintain the health and welfare standards mandated in the Act. Quite simply, NSR provides state and local permitting agencies an opportunity to review new and modified stationary sources to ensure that they install the best available control technology available to minimize their impacts on ambient air quality. In addition, we strongly believe that the current

NSR process in no way impedes the ability of sources to expand capacity or improve efficiency. In fact, our experiences have demonstrated that where the NSR process functions as it was originally designed □ where sources notify permitting agencies of the construction of new sources, or of modifications to existing sources, and supply us with a well-prepared, complete permit application that commits to the installation of the best control technology □ the NSR process is both timely and efficient. It is only where industry has resisted the installation of good pollution control technology that the process becomes uncertain and time-consuming.

We base our comments on the hundreds of years of combined experience that we share as state and local permitting authorities. Furthermore, we are guided by a set of principles that the associations adopted in 1994 to assist us in our efforts to work with EPA in the agency□s NSR reform process. The cornerstone of these principles is the concept that the best and most cost-effective time to control a source is at the time of its installation or modification, and that BACT and LAER should be applied in attainment and nonattainment areas, respectively. Consistent with this principle, the associations believe that a source□s selection of BACT should be □top down□ to ensure that sources apply the best controls, unless they can demonstrate that another control technology is more appropriate. In exchange for good controls, the associations are committed to providing industry with the timeliness and certainty they desire.

Our associations also hold the principle that NSR sources should not be allowed to □net out□ of control requirements (BACT or LAER). This practice undermines the benefits that can be achieved by applying controls to new or modifying facilities. In fact, even EPA□s June 22, 2001 NSR 90-day Review Background Paper states that the best time to control a source is at the time of installation. Yet, existing EPA policies allow new units at existing sources to net out of NSR requirements. This netting exemption completely contradicts EPA□s stated position that good pollution control technology is necessary at the time of installation and we strongly recommend that as EPA considers changes to the current NSR process, it take this opportunity to eliminate netting.

As STAPPA and ALAPCO have participated in EPA□s NSR reform efforts, we have used our NSR principles to evaluate draft proposals put forth by the agency. Accordingly, we have endorsed many of the concepts EPA proposed for clean unit exemptions, sector-based off ramps and plant-wide applicability limits as part of the agency□s NSR reform efforts. We continue to support and work with EPA to further develop these concepts. Attached to my statement is a copy of our March 14, 2000 comments to EPA that further outlines our position on these draft proposals.

We have reviewed EPA□s NSR 90-day NSR Review Background Paper and find it to be both accurate and useful. The document serves as an excellent primer for the NSR process, and provides interesting information on the impacts of the NSR process on both the refinery and utility industries. Moreover, we see nothing in the document that would indicate that the NSR process is onerous or burdensome to these industries. However, as EPA acknowledges in the document, there are some data gaps and STAPPA

and ALAPCO will work with state and local permitting agencies to fill those gaps.

Our associations are currently developing a detailed set of formal written comments on the NSR background paper and we will submit those comments to you by the July 27, 2001 comment deadline. On behalf of STAPPA and ALAPCO, thank you again for this opportunity to present our views on some fundamental NSR principles. I am happy to answer any questions you might have.

May 5, 2000

The Honorable Bob Smith, Chairman
Environment and Public Works Committee
United States Senate
307 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Smith:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), we would like to take this opportunity to voice our support for increased funding for the U.S. Environmental Protection Agency□s (EPA□s) Best Available Control Technology (BACT)/Lowest Achievable Emissions Rate (LAER) Clearinghouse.

As the primary implementers of the Clean Air Act□s New Source Review permit program, state and local air pollution control agencies are responsible for making the BACT/LAER determinations for new or modified sources. These determinations provide us with one of the most critical tools we need to protect air quality for the future □ the ability to ensure that a source installs good controls during its initial construction or when it undertakes a major modification.

However, the process of identifying proper BACT/LAER determinations for individual source installations is labor intensive and can be the source of uncertainty and delay in the permit process. A key component in the identification and installation of good controls is a robust BACT/LAER Clearinghouse, managed by EPA, with consistent entry of BACT/LAER determinations by trained staff, regular follow-up on entries and diligent quality control. Unfortunately, the current EPA Clearinghouse, which was established in the 1970s, falls short of these goals. The Clearinghouse functions solely as a passive repository for BACT/LAER determinations entered by state and local permitting authorities; it does not have any personnel to follow up on BACT/LAER entries to ensure that they are timely or perform quality control. In addition, the Clearinghouse does not offer any technical support to state or local permitting authorities. If the Clearinghouse is to provide state and local permitting authorities with the technological assistance they

need, it must be a well-managed, user-friendly web site staffed by EPA personnel that will ensure that the BACT/LAER information is timely and quality-controlled.

In FY 2000, the EPA BACT/LAER Clearinghouse received an annual funding of $80,000. The associations believe that this funding level is insufficient for EPA to upgrade the BACT/LAER Clearinghouse in the manner necessary. Therefore, we urge you to recommend to your colleagues on the Senate Appropriations Committee that EPA□s BACT/LAER Clearinghouse funding level be increased to $2.1 million in FY 2001. These figures are based on a Clean Air Act Advisory Group subcommittee□s estimate of $600,000 for startup in the first year, plus an annual operating cost of $1.5 million. This funding level will allow EPA to develop and manage a more robust BACT/LAER Clearinghouse that will greatly expedite information transfer, promote technical analyses, and ensure equity in permit transactions. By providing state and local agencies with the most recent BACT/LAER determinations, the EPA managed Clearinghouse will play a critical role in ensuring that new or modified significant sources install BACT/LAER at the time of their construction. Moreover, a robust Clearinghouse would allow state and local agencies to make timely BACT/LAER determinations, thus providing industry with the timeliness and certainty they desire.

Thank you very much for your assistance in this critical matter. We hope we can count on your support. If we can answer any questions or provide you with any additional information, please feel free to contact either of us, or S. William Becker, Executive Director of STAPPA and ALAPCO.

Sincerely,

William O□Sullivan
STAPPA Chair
New Source Review
Subcommittee

John Paul
ALAPCO Chair
New Source Review
Subcommittee

Cc: Senator Max Baucus, Ranking Member
Senate Environment and Public Works Committee

Senator Ted Stevens, Chairman
Senate Appropriations Committee

Senator Robert C. Byrd, Ranking Member
Senate Appropriations Committee

Senator Christopher S. Bond, Chairman
Senate Appropriations Committee, Subcommittee on
Veterans Affairs, Housing and Urban Development
and Independent Agencies

Senator Barbara A. Mikulski, Ranking Member
Senate Appropriations Committee, Subcommittee on

Veterans Affairs, Housing and Urban Development
and Independent Agencies